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November 18, 2021

By ECF

Honorable Jesse Furman
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *United States v. Joshua Schulte*, 17 Cr. 548 (JMF)

Dear Judge Furman:

I write regarding three pro se notices of appeal that were filed by ECF on Mr. Schulte's behalf on October 15, 2021 (Dkt. Nos. 554, 555, 556). These notices indicate that Mr. Schulte wishes to appeal to the Second Circuit from two orders entered on October 6, 2021 (Dkt. Nos. 526 & 527), and one entered on October 12, 2021 (Dkt. No. 552).

We learned this morning that the Southern District clerk's office is treating the notices as defective (and has therefore not transmitted them to the Second Circuit) because they were not filed in the customary manner by mail or hand delivery. Mr. Schulte should not be prejudiced by this filing error, which occurred through no fault of his own. Accordingly, upon consultation with the clerk's office, and to protect Mr. Schulte's rights as a pro se litigant, I respectfully request that the Court issue an order directing the office to treat the notices of appeal as if they were filed by hand and to transmit them to the Second Circuit.

Alternatively, I ask the Court to extend the deadline for filing these notices of appeal up to and including November 19, 2021, pursuant to Federal Rule of Appellate Procedure 4(b)(4). Rule 4(b)(4) provides: "Upon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b)." Here, the "good cause" or "excusable neglect" is standby counsel's good-faith, reasonable, but mistaken belief that filing the notices of appeal by ECF would be sufficient, especially given the ongoing COVID-19 pandemic. While virtually all other litigation papers can be filed electronically, we now understand that a notice of appeal is an exception to this practice. We regret our error.

The government takes no position on these requests.

Thank you for your consideration.

Respectfully submitted,

/s/

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cc: AUSA David Denton
AUSA Michael Lockard
Pro Se Defendant Joshua Schulte